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## **Justice on the line? A comparison of telephone and face-to-face advice in social welfare legal aid**

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### **Abstract**

This paper investigates the impact on legal advice of the major shift to telephone-only services in social welfare legal aid, which took place in April 2013. An empirical study comparing telephone and face-to-face advice reveals that face-to-face contact has considerable advantages in the advice interview. Based on interviews and observations with housing law clients, their lawyers and advisers, the findings of this qualitative study demonstrate that clients and lawyers often find it easier to express themselves and understand each other face-to-face. The face-to-face interview benefits from features including the stronger emotional connection between lawyer and client, non-verbal communication, more expansive conversation and the greater ability to consult and confer over documents. Telephone-only advice may be suitable for some more capable clients and uncomplicated matters, but this qualitative research shows that vulnerable clients are more likely to be adversely affected by the potential disadvantages of telephone-only contact. Clients with more complex social needs or with more serious or urgent cases are better served by face-to-face advice. The findings of this research should inform the LASPO review and future priorities for legal aid funding.

**Key words:** access to justice, telephone advice, legal aid, lawyer-client relationship, housing casework

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## Introduction

Technology can save access to justice. This is the argument made by influential commentators such as Susskind (Goodman, 2017; Susskind, 2008; Susskind and Susskind, 2015). It is also the increasingly common response of the state when problems of access to justice are raised. This approach is part of a wider governmental drive towards technology-based public service delivery. The focus in this area has mainly been on digital technology.<sup>1</sup> Nevertheless, greater use of ‘old technology’ in the form of telephone services is also evident in the government’s management of public sector services.<sup>2</sup> Telephone-only legal aid is an example of this move towards technological solutions to state-funded service provision. In April 2013, at the same time as drastically reducing the available legal aid funding for social welfare law problems,<sup>3</sup> the Coalition government introduced measures which would substantially increase the proportion of telephone-only legal aid provision. This was accompanied by a corresponding reduction in the availability of legally-aided face-to-face services. From April 2013, telephone-only advice through the Community Legal Advice service (CLA) became mandatory in the areas of education, discrimination and debt. This was despite an impact assessment by the Ministry of Justice (MOJ) which recognised that these changes ‘may cause access problems for some clients’ (MOJ, 2010a: 4). Moreover, even among those who are optimistic about the role of technology in providing access to justice, it is recognised telephone advice may have limitations in terms of dealing with more vulnerable clients with complex legal problems (Smith & Paterson, 2014). This paper uses a recent empirical study to explore the extent to which remote delivery in social welfare legal aid has the potential to marginalise a substantial proportion of already disadvantaged users of legal services. It investigates whether transforming the means of lawyer–client interaction in housing and homelessness cases alters the nature and quality of the service that a client receives.

The lawyer-client interview is central to the giving of advice in social welfare law cases. The quality of the interview can have a significant impact on the quality of the advice. For

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<sup>1</sup> See, for example, the Government Transformation Strategy (Cabinet Office and Government Digital Service, 2017).

<sup>2</sup> In 2014, for example, HMRC closed all of its 281 local face-to-face enquiry centres to be replaced by a telephone service (which it was said could arrange home visits in appropriate cases) (HMRC, 2013)

<sup>3</sup> Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), legal aid funding is only available for debt cases where someone’s home is at risk and welfare benefits cases involving an appeal on a point of law. In education law, only special educational needs matters are still in scope. A new category of ‘discrimination’ law is the only aspect of employment law that remains funded. In housing law, eviction and possession, homelessness, hazardous disrepair and harassment remain in scope. These changes were predicted to result in a reduction of 59 per cent (£89 million) in social welfare legal aid (Low Commission, 2014).

social welfare clients, the risks of not receiving good quality legal advice are high – they may suffer eviction or homelessness, no or reduced income or a lack of social care services. This makes it imperative to examine the potential consequences of replacing face-to-face interactions with telephone-only provision for clients facing these difficulties. It was originally claimed by the Coalition government that the changes to legal aid under the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO), which included telephone-only provision, would focus resources on ‘those who need it most’ (MOJ, 2010b: 5). This research challenges this claim. It is therefore fortunate that it is being published at a time when it will be able to assist with the long-awaited post-implementation review of LASPO (HC Deb 30 October 2017 vol 630 cols 14-15WS).

### **Comparing face-to-face and telephone communication in lawyer-client interaction**

Currently there is only limited research into the provision of telephone legal aid services. Recent statistical analysis of data comparing telephone and face-to-face advice has revealed better outcomes being achieved for face-to-face clients (Balmer *et al*, 2012; Patel *et al*, 2014; Patel and Smith, 2013a; Smith *et al*, 2013a). It has also shown that, in housing cases, those with more serious problems gravitate towards face-to-face advice (Balmer *et al*, 2012). Clients with welfare benefits problems have shown a similar inclination towards face-to-face advice (Pereira *et al*, 2015). In addition, concerns have been raised about problems of communication over the telephone and the potential impact on trust and rapport between the client and adviser. Conversely, anonymity, convenience and accessibility have been suggested as particular benefits of telephone debt advice (Patel and Smith, 2013a; Patel *et al*, 2014; Patel and Mottram, 2014; Paskell *et al*, 2014; Ellison and Whyley, 2012).

The literature also suggests that vulnerable clients may experience particular difficulties when dealing with telephone advice services. Within this article, the terms ‘vulnerable’ and ‘capable’ are used to describe clients. For the purposes of this paper, vulnerability refers to physical, mental or social characteristics which make it more difficult for individuals to manage their day-to-day affairs and which mean that they find it harder to cope when faced with problems. Capability refers to the client’s ability to take responsibility for their own case and to act on advice. This takes into account the client’s communication skills, physical and mental health and their emotional state. Research has shown that vulnerable clients with housing problems are more likely to use face-to-face services (Balmer *et al*, 2012). In addition, policy research in the area of debt advice (in studies undertaken both before and after the introduction of the mandatory CLA telephone service) suggests that telephone

services can be effective in standard debt cases, but more vulnerable clients may struggle with telephone delivery (Patel and Smith, 2013b; Paskell *et al*, 2014). In contrast, a study conducted on behalf of the Money Advice Trust found that there was scope for a greater proportion of vulnerable clients to receive telephone debt advice than is currently the case (Ellison and Whyley, 2012). Nonetheless, overall, the evidence tends to suggest that vulnerable clients are more likely to experience difficulties with using telephone-only services. Until now, there has been a lack of qualitative socio-legal research comparing telephone and face-to-face advice, which it is the aim of this research to address.

### **Lawyer<sup>4</sup>-client interaction: models of lawyering**

Within this paper the precepts of the client-centred model of lawyering are used to compare the nature, quality and efficacy of telephone and face-to-face interviews between lawyers and clients. Client-centred lawyering is a model of lawyering which gives priority to the participation of the client and requires the lawyer to use their expertise to ascertain and then achieve, as much as is possible, the client's objectives. It also emphasises the relational aspects of lawyer-client interaction (Binder *et al*, 2011).

Client-centred lawyering emerged as a response to the growing dissatisfaction with lawyers that arose during the 1970s and 1980s (Mungham and Thomas, 1983; Sherr, 1999). At this point, Durkheim's (1992) notion of professional altruism, which had been propounded by functional sociologists such as Parsons (1964) was being displaced. Sociologists began to conceive of professional relationships as an exercise in class power driven by lawyers' material and social self-interest (Larson, 1977; Johnson 1972; Abel, 1988; Macdonald, 1995; Watson, 2008). The profession's claims to altruism and public service were considered a conceit designed to achieve the collective 'professional project' of material reward and upward social mobility (Johnson, 1972; Larson, 1977: xvi; Abel, 1988; Mayo *et al*, 2014). Within this analysis, the lawyer-client relationship became an instrument of manipulation and control (Johnson, 1972).

Client-centred lawyering was conceived as an attempt to correct these perceived deficiencies in conventional lawyering practice. It aspires to change what was considered to

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<sup>4</sup> With regard to the terminology used in this paper, 'lawyer' refers to staff that had 'solicitor' roles and 'adviser' refers to other caseworkers. The existing socio-legal literature refers mainly to the 'lawyer-client relationship'. This and the term 'lawyer' have therefore been retained when citing the literature. However, five lawyers and 18 advisers participated in this research, so in the analysis of the data, the term 'adviser' is used generically to describe the legal personnel in this study. However, when quoting an individual, their citation indicates whether they are a lawyer (L) or an adviser (A).

be traditional lawyering behaviour. It is fuelled by a belief that lawyers' knowledge should be used to assist the client in finding a solution to their problems (Binder *et al*, 2011). In addition, by facilitating client participation, it attempts to rebalance the power between lawyer and client. The more egalitarian nature of client-centred lawyering chimes with the ethics of not-for-profit (NFP) advice providers, such as Law Centres and advice centres, and as a result it has been largely adopted within those spheres. It was, for example, a client-centred model that was observed in the empirical research into the delivery of social welfare advice by Community Legal Advice Centres (CLACs) and Networks (CLANs) conducted by Buck *et al* (2010).

Nevertheless, despite its egalitarian aims, client-centred poverty lawyering has been condemned by a body of critical lawyers for silencing the client voice and substituting the lawyer's narrative for that of the client (Cunningham, 1992; Alfieri, 1991; Hosticka, 1979; White, 1991). Many critical legal scholars are proponents of a collaborative or 'rebellious' model of lawyering which involves full-scale co-working with clients<sup>5</sup> and collective community mobilisation (Alfieri, 1991; Tremblay, 1992; López, 1989). This is an approach that has many attractive qualities for those who see law as a potential weapon in the struggle for social justice, but it is posited that this model of lawyering fails to address the practical realities of representing disadvantaged clients under difficult political conditions (Lesser Mansfield, 1995). This general impracticality may be the reason why the critical lawyering model is rarely observable in practice, particularly given the changes to legal aid introduced by LASPO. Mayo *et al* (2014), for example, identify the difficulties experienced by Law Centre workers in carrying out community and policy work within the pre-LASPO funding environment. Following LASPO, the struggle for many social welfare law practitioners has become simply to continue in practice.<sup>6</sup>

Thus it is submitted that client-centred lawyering represents a more realistic and achievable approach to social welfare law practice than the 'rebellious' model. Furthermore, it still allows for work aimed at alleviating deprivation and achieving social justice through community-based legal casework. There is some scepticism regarding how much client-

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<sup>5</sup> Alfieri (1991: 2130) proposes 'client-conducted interviewing, counselling, and investigation, or client-assisted negotiation and trial practice'.

<sup>6</sup> In 2016-17, there were 849 'other non-family' provider offices doing work under legal help/controlled legal representation. This is a significant reduction from 2012-13, when there were 1,456 provider offices in this category (Ministry of Justice and Legal Aid Agency, 2017). Immediately following the LASPO reforms, 9 Law Centres and 10 Shelter offices closed, and Citizens Advice lost 350 specialist advisers (Justice Committee, 2015).

centred lawyering has been adopted by individual practitioners (Boon, 2014). Nevertheless, as mentioned above, there is evidence of its existence in practice, particularly in the NFP advice sector. Moreover, the client-centred approach appeared to be the standard which many of my adviser/lawyer research participants strove to achieve. Accordingly, this paper uses the client-centred model to explore the possible consequences of telephone-only advice for the emotional and functional elements of the lawyer-client interview as they materialise in real life advice settings.

### **Client-centred interviewing**

Having selected the client-centred model as the benchmark for this work, it is necessary to identify the role and function of the interview within this approach. It is important to note that the client-centred interview has both practical and relational qualities. This is particularly illustrated by the multifunctional nature of the first meeting. Within this first meeting, it is posited that the lawyer should ascertain from the client why they have been consulted, provide initial advice and propose a course of action. The first meeting should also establish the good working relationship which will form the foundation for effective advice provision for the duration of the case (Sherr, 1986; 1999; Maughan and Webb, 2005; Elkington *et al*, 2014). Research has shown that the ‘relational, interpersonal qualities, such as empathy and trust’ are critical to the lawyer–client relationship (Sommerlad and Wall, 1999: 41; Sommerlad, 1999: 500; Buck *et al*, 2010; Smith *et al*, 2013b). More specifically, Buck *et al* (2010: 117-26) and Sherr (1999: 8-9) describe the key functions of the first meeting as: ‘establishing trust’, ‘listening’/‘allowing clients to tell their story’, ‘questioning’/‘probing and exploring’, ‘advising’/‘checking of understanding’ and ‘inviting additional issues’ (these phases are explained in more detail below). It is evident from this analysis that the practical functions of the lawyer–client relationship are interrelated with its emotional components. Thus, while disentangling these factors in order to understand them better, we should not lose sight of the fact that in reality the interpersonal elements of the lawyer–client interview are intertwined with the performance of its practical functions.

### **About this study**

The question raised by the existing evidence is whether telephone-only delivery of social welfare legal aid advice is able to provide an equivalent service to face-to-face advice. Answering this question requires an investigation into the behaviours, attitudes and experiences of social welfare clients, lawyers and advisers engaged in telephone and face-to-

face advice. This calls for in-depth qualitative research. Previous academic studies in this area have taken a largely quantitative approach. Using semi-structured interviews in this study enabled me to explore the perceptions and experiences of the research participants from their own perspective. Combined with observations, these methods allowed me to develop a sophisticated understanding of how lawyers, advisers and clients experience telephone and face-to-face interaction.

My potential research population for this project was very extensive. It included all social welfare law clients in England and Wales receiving ‘legal help’ under legal aid over the telephone or face-to-face and their lawyers and advisers. In 2013-2014, there were 52,981 legal help cases started in the areas of discrimination, education, housing, debt and welfare benefits (Legal Aid Agency (LAA), 2014). In addition there were 11 telephone providers and 677 providers with face-to-face contracts in these categories (LAA, 2013; LAA 2014). The number of lawyers, clients and advisers in this grouping is therefore higher than it would have been possible for me to interview. In order to devote the available resources to researching where the differences between telephone and face-to-face advice were likely to be most evident, I undertook purposive sampling in this research (Flick, 2009; Charmaz, 2006).

The sampling frame adopted focused on clients and advice providers in matters of housing law. Housing is an area of social welfare law where both telephone and face-to-face advice are still routinely provided under legal aid funding. In addition, legal needs surveys have shown that young people and people with mental health issues are more likely to report problems with housing than other groups (Pleasence *et al*, 2010; Balmer, 2013). These are also client groups that have been identified as more likely to find using telephone-only services problematic (Mind and Rethink, 2011; Disability Charities Consortium, 2011; Kenrick, 2009).

Most of the interviews and observations in this study took place with the clients, advisers and lawyers of a nationwide NFP organisation giving housing law advice funded by legal aid in local offices and as part of the Community Legal Advice (CLA) telephone advice service.<sup>7</sup> Between January and September 2014, I observed or listened in on 22 lawyer/adviser-client interviews (11 telephone and 11 face-to-face) and conducted 40 research interviews, 20 with

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<sup>7</sup> Four local offices in total: two in London and two in cities outside London. The CLA office was outside London.



lawyers/advisers (10 telephone and 10 face-to-face) and 20 with clients (7 telephone and 13 face-to-face).<sup>8</sup> Table 1 below provides more detailed information on client profiles.

Carrying out research within a dynamic working environment affected the availability of lawyers and advisers willing and able to participate in my research. In addition, I experienced particular problems with recruiting telephone clients to the research.<sup>9</sup> Written requests for participants generated very few responses. Clients involved in telephone observations rarely kept to agreed arrangements for follow-up interviews or further contact. The problematic personal circumstances of these clients are likely to have reduced their capacity or willingness to be involved in the research (Plesence and Balmer, 2007). In contrast, it was often possible for me to interview face-to-face clients immediately after observations of their interviews with the lawyer/adviser. The various issues encountered with regard to recruitment and participation meant that it was not possible to interview all the clients and advisers observed or observe all the advisers and clients interviewed.

### ***Research interviews***

All of the lawyer and adviser interviews were conducted in person. Seventeen of the research interviews with clients were conducted face-to-face. I carried out three telephone interviews at the request of the clients concerned (two face-to-face clients and one telephone client). The face-to-face clients were mainly from the areas of the local offices involved in the study. As would be expected, the telephone clients interviewed were from a wider geographical spread, but tended to be from the Midlands and the South East.

Table 1: Client sample profile

	Face-to-face	Telephone
<b>Gender</b>		
Female	11	8
Male	5	5
<b>Ethnic Origin</b>		
White British	9	5
White Other	0	1

<sup>8</sup> Detailed information on the interviews and observations, including lawyer/adviser profiles and timings, is included in my PhD thesis (Burton, 2015)

<sup>9</sup> My PhD thesis includes a full discussion of these issues (Burton, 2015).

Black or Black British	4	2
Asian or Asian British	0	3
Mixed	1	0
Other (Arabic)	1	0
Not known*	1	2
<b>Physical/mental health issues</b> (NB: some clients have more than one type of health issue)		
Mental health issues	9	4
Mobility issues	4	1
Health issues	9	7
Hearing impairment	0	1
<b>Age</b>		
20-29	3	1
30-39	0	4
40-49	4	4
50-59	4	2
60-69	3	2
Not known*	2	0

(\* 'Not known' means it was not possible to obtain this information from the observation and a follow-up interview was refused or not possible to arrange)

**Total sample:** 29 clients – 22 observed (13 follow-up interviews) and 7 interviews only

**Face-to-face:** 16 clients – 11 observed (8 follow-up interviews) and 5 interviews only

**Telephone:** 13 clients – 11 observed (5 follow-up interviews) and 2 interviews only

All the interviews and observations were recorded or noted in detail. All the recordings and manuscript notes were then transcribed in full. Data collection and analysis of the data were carried out using grounded theory method. I chose 'grounded theory' as a research strategy because of its requirement that theory emerges from the data, rather than being arrived at by testing a preconceived hypothesis. This gives it a 'real world' focus (Glaser and Strauss, 1967: 2–3; Strauss and Corbin, 1998: 12–13). Reliance on the data in this way ensured that the voice of the participants, and particularly the client participants, was central to the development of theory and the findings of this research. As a result, I was able to produce a detailed and thought-provoking account of the differences between telephone and face-to-face advice for social welfare law clients.

### **The lawyer-client interview: letting the client tell their story**

### ***Obtaining detailed instructions***

This is the first stage in the initial lawyer–client interview. It is fundamental to the client-centred approach to interviewing that the client should be able to explain their problem in their own words with minimal interruptions from the lawyer (Sherr, 1999; Elkington *et al*, 2014; Buck *et al*, 2010; Slorach *et al*, 2015; Webb *et al*, 2013). Lawyers are required to ‘actively listen’ to clients (Binder *et al*, 2011: 40–48). Within this model, dealing with the emotional life of the client is considered necessary to provide them with an adequate service (Binder *et al*, 2011; Sommerlad, 1999). It is important not only for the purposes of the full and frank exchange of information and advice between lawyer and client, but also in terms of obtaining the client’s agreement and co-operation with taking action (Buck *et al*, 2010; Sherr, 1999; Sommerlad and Wall, 1999).

The strong consensus among face-to-face advisers was that it was easier to get more detailed instructions when dealing with a client face-to-face. Face-to-face clients often felt that they were able to explain themselves more easily face-to-face. There were telephone clients who specifically stated that they found it easier to communicate face-to-face. These were telephone clients with personal characteristics, such as mental health, language or hearing issues (sometimes in combination), which impeded their ability to communicate. It was rarer for telephone advisers to say expressly that clients would be more forthcoming face-to-face, although a number of telephone advisers recognised that clients might be more comfortable speaking to the adviser face-to-face.

Non-verbal communication was also seen to have a directly instrumental effect in terms of enhancing clients’ ability to get across their account in their own terms in face-to-face interviews. Nonetheless, telephone advisers considered that verbal cues had potential to substitute for non-verbal communication. Yet, in the telephone observations, the use of verbal cues was rarely noted.<sup>10</sup> Analysis of qualitative social science research interviews has shown that, despite not being able to employ body language, telephone interviewers use fewer ‘acknowledgement tokens’ (for example, ‘mm’, ‘hm’, ‘yeah’) than face-to-face interviewers (Irvine, 2011: 208). Thus, while there may be scope for verbal cues to compensate for the loss of non-verbal communication, it seems that, at least to some degree, they may not be used in practice.

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<sup>10</sup> It is difficult to be certain that verbal cues were not used, because, although few are noted down, their absence is not specifically noted either. It was, however, often the impression I was left with.

### ***Relational factors***

A clear link was made between the depth of the relationship between the adviser and client and getting the best possible instructions from the client. As one face-to-face adviser explained, echoing the view of several others:

‘I come at it from very much that point of view...we need to get as much of the story as possible and you can only do that if they feel comfortable to tell you. So, the relationship is everything.’ (Face-to-face adviser: FL2)

Many clients, both telephone and face-to-face, considered that face-to-face contact results in stronger emotional connections between advisers and clients. They ascribed this to the greater opportunities to experience personal contact, emotional support, empathy, compassion and adviser commitment in the face-to-face environment. The need for the greater emotional connection fostered by face-to-face contact was expressed by vulnerable and more capable clients.

Non-verbal communication appeared to play a significant role in strengthening the relationship between clients and advisers. Face-to-face clients stated that they could be more certain of the adviser’s commitment to them and their case by assessing their body language. A face-to-face client described the difference that the adviser’s body language made in terms of assuring her of the adviser’s attentiveness in relation to the case:

‘...[S]he’s actually leaning forward, not sitting backwards, she’s, you know, kind of attentive and nodding like you are [both laugh], listening, it all puts you at ease. To say right, okay, well actually I am being heard...’ (FC11)

Nevertheless, there were telephone clients who felt able to form a strong bond with their adviser. The adviser’s pleasant manner towards them over the telephone satisfied them of the adviser’s commitment towards them. In addition, telephone clients with mortgage problems were reassured by the adviser’s ‘professionalism’, which they saw in terms of the adviser’s apparent legal knowledge and familiarity with the process. Interestingly, face-to-face advisers were much more likely than telephone advisers to recognise the importance of clients being confident of the adviser’s engagement in their case and being on their side.

### ***Trust and reassurance***

Lawyer–client literature tends to emphasise trust as an essential component in effective lawyer–client relationships and interviews (Sherr, 1999; Maughan and Webb, 2005; Buck *et al*, 2010; Smith *et al*, 2013b). In this research, however, the primary focus of clients was more likely to be the reassurance that they were able to gain from an interview with the adviser. It is suggested that the difference between trust and reassurance is that trust describes how the client and adviser feel about each other and reassurance describes how the adviser makes the client feel about their problem and their case. From the responses of advisers and clients, it is evident that trust and reassurance are interrelated, but involve different perspectives on the same situation. Across the broad range of capabilities and types of problem, a significant number of face-to-face clients and several telephone clients associated greater reassurance with face-to-face contact.

Advisers were much more likely than clients to initiate discussions on the issue of trust. There was a substantial consensus among advisers that trust with clients was more easily established face-to-face. Telephone advisers often agreed that trust was built more quickly face-to-face, but they usually felt that, over time, they could reach the same level of trust with their clients. This was explained by a telephone adviser with previous face-to-face experience:

‘...I think during the interview you would build up that relationship with them and I think that’s easier face-to-face...But after I’ve spoken to them for, you know, a few times and they can see that their case is being progressed, I think [it] does get a lot, a lot better.’ (TA4)

Face-to-face advisers took issue with this. It was felt that, as well as establishing trust more quickly with clients, they reached deeper levels of trust with the client as the case continued. Furthermore, as a telephone adviser recognised, in housing matters, which are often urgent, gaining the client’s trust quickly is central to being able to deal with the case effectively:

‘... [U]nfortunately with housing cases, sometimes speed is of the essence. So I think sometimes – I wonder sometimes whether they can get to the heart of the issue faster than we can. Because they’re seen.’ (TA1)

This suggests that trust can be established over the telephone, although it is possible that the degree of trust and the time taken to form a trusting relationship may differ from face-to-face interaction. For more vulnerable clients or those with more serious legal problems, telephone contact may prove insufficient to meet their emotional needs at a very difficult time. This could negatively influence the extent of the information the client gives to the adviser, particularly in the early stages of the case.

### ***Interview structure***

Face-to-face advisers also believed that the less structured nature of face-to-face advice gave clients more room to express themselves. There was acceptance among the telephone advisers that the telephone interview was often more prescriptive than the face-to-face interview and tended to be based on a series of questions and answers. They were unlikely, however, to link it to clients being less willing or able to express themselves. In the observations, face-to-face advisers often initially allowed clients to tell their stories in their own words, whereas the telephone interviews were more likely to adopt a question-and-answer format from the outset. There were nevertheless face-to-face meetings that would have benefited from a more ordered approach in order to reduce the possibility of client confusion.

It has been argued that the risk of a more tightly-controlled interview is that it can prevent the client from saying something important (Slorach *et al*, 2015). Client-centred lawyering favours a naturalistic approach to interviewing, as this is considered to facilitate greater client disclosure (Binder *et al*, 2011; Sherr, 1999). Clients may also limit problem disclosure in response to perceived time constraints (Smith *et al*, 2013b). A possible consequence of greater adviser control is that several telephone clients did not raise potentially significant issues, for example, on one occasion, personal reasons for their rent arrears, until calls reached the ‘wrapping up’ stage. This seemed less of a characteristic of the face-to-face interviews observed. This suggests that there may be less rather than more room for the client voice in the telephone interview.

### ***The role of documents***

Telephone and face-to-face advisers had divergent views on the value of access to documents when taking instructions. Within the client-centred lawyering literature, relatively little attention is paid to the document (Binder *et al*, 2011; Sherr, 1999). It is assumed that the papers will be available to the adviser. Remoteness reveals the key role of documents in

obtaining detailed instructions. Face-to-face advisers explained that in a face-to-face interview the adviser is quickly able to select and read the relevant documents in order to form a picture of the client's case. Inconsistencies in the client's account can also be identified sooner. It was notable too that less articulate clients put particular faith in using the document as a tool to explain their problem more clearly. Thus documents can assist face-to-face advisers in getting more accurate instructions sooner.

Moreover, documents were important not only for their written content but also their physical form. Documents are useful 'props' in the advice-giving process. Thus it is possible to see the document in its role as a 'material artifact' of law (Riles, 2011: 175). Face-to-face advisers mentioned the benefits of physically pointing when taking a client through a document. In observations, advisers also used documents to check a complicated history with the client. They touched a document as they spoke, indicating to the client which stage in the client's account the adviser had reached.

Over the telephone, getting access to documents could take some time. Telephone advisers explained that they were usually able to get around these problems by getting the client to read out the relevant part of the document to them over the telephone. This is problematic if clients have poor literacy skills. In addition, in telephone observations there were instances of clients doggedly reading out the standard wording and struggling to find key information. Telephone advisers agreed it could take them longer to get to the core of the issues in a case without seeing the relevant documents.

In a time of extensive electronic communication, it might be assumed that problems with obtaining documents could be circumvented by using e-mail or fax. This did not reflect the observed telephone interviews, where clients struggled to find ways to send their information to the adviser other than by post. As well as not knowing how to use the technology, cost could also be a factor prohibiting clients from using e-mail or fax. Recent research into the Telephone Gateway found that clients can experience difficulty with using e-mail to send documents, and in some instances resort to using commercial services to do this for them – potentially at a high cost to clients on already low incomes (Paskell *et al*, 2014). In the observations, these issues affected both vulnerable and more capable telephone clients.

### ***Anonymity, privacy and security***

Opinions were divided on whether the anonymity of the telephone made it easier for clients to disclose sensitive information. This reflects a similar inconclusiveness in the literature of social research methods interviewing (see, for example, Midanik *et al*, 1999; Holbrook *et al*,

2003; Shuy, 2003). Anonymity has been put forward previously as a benefit of telephone advice (MOJ, 2011; Patel and Smith, 2013b; Ellison and Whyley, 2012). Telephone advisers shared the perception that disclosure of embarrassing matters was easier over the telephone. A telephone client specifically valued telephone advice because of its lack of personal contact, at a time when she was feeling emotionally fragile. In contrast, face-to-face clients and especially face-to-face advisers were broadly of the opinion that being face-to-face made it easier to discuss sensitive issues. Given this range of views, it seems that a client's preferred medium for volunteering sensitive information is likely to depend on the individual and their circumstances. What is vital therefore is that both avenues of receiving advice remain available for clients into the future.

The extent of some clients' mistrust of telephone communication was a highly significant and unexpected finding of this research. It was particularly pronounced in relation to clients who were originally from overseas. The proposition that anonymity makes telephone advice more attractive to ethnic minority clients – a government claim when these reforms were introduced (MOJ, 2010a) – is not supported by this research. Recent scandals regarding phone-tapping and government surveillance appeared to have had an impact on clients' psyche. A typical comment was:

‘On the phone also with this technology which is there, you don't know whether you are speaking to [the adviser] alone or there's someone also listening on the other end. Face-to-face is sort of privacy, it's you and I.’ (FC1)

A capable face-to-face client was concerned about giving his financial details over the telephone, because of the possibility of fraud. Face-to-face clients valued the privacy and security of the interview room. Privacy has been shown to be a factor in facilitating full client disclosure (Smith *et al*, 2013b). This indicates some clients will be more willing to give a detailed account of their situation when they are able to meet their adviser in the private space of an interview room.

Letting the client tell their story has many different facets, each susceptible to change in a variety of ways, depending on the form and nature of the method of delivery. However, when the various impacts of telephone communication on this aspect of the interview are considered, the evidence supports the argument that – particularly for clients with any sort of impediment to their ability to communicate – face-to-face contact is a better way of taking



their instructions. The end result is simply that the client can better tell their story and there is more information available for the adviser.

### **The lawyer-client interview: questioning and probing/exploring**

‘Questioning’ or ‘probing and exploring’ is the second phase in the interview when the lawyer gathers more detail on the presenting problem and attempts to find out about any other potential difficulties. This is also the phase when the lawyer begins to test the client’s instructions for ambiguities and inconsistencies. This necessitates striking a delicate balance between essential questioning and inappropriate cross-examination (Buck *et al*, 2010; Sherr, 1986; 1999).

A view shared by both face-to-face and telephone advisers was that face-to-face interviewing lent itself more readily to questioning the client. It was suggested that the client’s emotional remoteness from the situation made it easier for them not to tell the truth. A telephone adviser described clients as more ‘detached’ over the telephone (TA3). A face-to-face client recognised that this feeling of emotional disengagement could be a motivation not to tell the truth when speaking on the telephone:

‘...[W]hen you’re speaking to someone on the phone, because you don’t know who they are, you’re not getting that sympathetic feeling from them and basically you’re not going to tell the full story or the whole of what’s going on or you might even lie. And I’ve found myself doing this.’ (FC12)

An important, but particularly controversial aspect of questioning and probing the client’s account is the degree to which non-verbal communication provides an aid to assessing the client’s veracity. There was a marked difference between the attitudes of face-to-face advisers and lawyers on this issue. Face-to-face advisers (ie non-solicitors) were often reluctant to accept that part of the adviser’s role was to assess the credibility of the client’s version of events. This was accompanied by a wariness of expressing the view that body language could indicate when the client was being less than straightforward with the adviser. In contrast, several face-to-face lawyers (ie solicitors) felt facial or bodily expressions or gestures could be indicators of the client being less than truthful. Significantly, a number of telephone advisers agreed that body language could make it more possible to distinguish when clients were giving a truthful account. The extent to which ‘demeanour’ makes it possible to tell truth from lies is highly contested (see, for example, Stone, 2009; Costigan

and Thomas, 2000; Orcutt *et al*, 2001). Ekman (1992) suggests that it is difficult to mask facial expressions immediately. Emotions may show fleetingly on the face before they are suppressed by the individual, hence giving a clue to the watcher that the person is concealing an emotion and may be lying. This gives some credence to the notion that non-verbal communication can help with assessing a client's version of events. Thus it is possible that the ability to see a client's body language may give a face-to-face adviser an advantage in terms of judging a client's truthfulness when questioning their account.

In observations, the level of probing was not particularly extensive in either telephone or face-to-face settings. In most instances, this did not appear to be related to the method of communication used. It did seem to be an issue, however, in cases where the client was less able to communicate for reasons of mental health or language difficulties. An example of this was where a telephone adviser struggled to take instructions in English from a Spanish-speaking client (despite the assistance of the client's support worker). Interviewing the client in person in English a few days later, I was able very quickly to get a more comprehensive account of the client's complex domestic violence history. This suggested that it was the telephone interaction that had compromised the adviser's ability to explore the client's situation more deeply.

### **The lawyer-client interview: advising**

Advising and agreeing the next steps to be taken is the final stage of the interview. According to the client-centred approach, advising involves applying the law to the client's situation and recommending an appropriate course of action. Advice must be communicated to the client in a way that they understand, so that a proposed plan can be agreed and put in motion (Sherr, 1999). Taking action can be difficult for clients. Research into telephone advice 'hotlines' in the US found that a significant proportion of clients reported they had not acted on advice because they had not understood it (Pearson and Davis, 2002). Buck *et al* (2010) found that clients struggled with self-help even when allocated appropriately.

Advisers often felt that giving advice could be easier face-to-face. In the first instance, advisers could often be more certain about their advice at an earlier stage in the case because of obtaining more detailed and accurate information in the first two phases of the interview. In addition, there was a widespread agreement among telephone and face-to-face advisers that non-verbal communication, especially facial expressions, provided advisers with clues in respect of client understanding or their reaction to the advice. A telephone adviser

commented: 'I think it's a lot easier [to] judge somebody's understanding if you're sat with them face-to-face' (TA2).

It was also suggested that the more robust relationship which developed face-to-face made clients more willing to accept advice. This was identified as particularly important in situations where difficult conversations with the client were necessary. Other research has also shown that a client's willingness to accept unpalatable information is influenced by the depth of their relationship with the adviser (Sommerlad and Wall, 1999). An agitated face-to-face client explained that being able to see the adviser's body language made him believe that the adviser cared about his situation. This meant that he was willing to accept the opinion of the adviser regarding his case, which he said he would not have done over the telephone.

When it came to clients acting on advice, several face-to-face advisers were conscious of being able to have a greater influence on clients face-to-face than over the telephone. This was supported by a telephone adviser, who remarked: '...[I]f you had a really urgent case and you really needed the client to go and do something...I think that comes across a lot better face-to-face' (TA4). A face-to-face client who was eventually persuaded to seek medical help for his depression explained:

'On the telephone, [adviser]'s explanation would not be enough. Seeing her face-to-face meant she went into it in more detail than she would have over the telephone – because she was able to go into it in more detail, I was more convinced.' (FC3)

Thus face-to-face advisers may be better placed to secure their clients' future co-operation in the case.

A stark difference between telephone and face-to-face clients is that, in many instances, telephone clients will be largely reliant on self-help. A minority view expressed by a telephone adviser was that this led telephone clients to be more engaged and hence able to achieve better outcomes on their own behalf. In contrast, face-to-face advisers were acutely aware of the difference that their intervention could make on behalf of clients, particularly in relation to attending court. As one face-to-face adviser said: '...[F]or rent arrears, possession stuff I don't get why you would just do phone advice' (FA2). Moreover, research has indicated that self-help strategies are not suitable for clients with serious legal problems who lack the requisite skills and educational ability to deal with them (Genn, 1999; Genn *et al*, 2004; Moorhead and Robinson, 2006).

With regard to urgent matters, telephone advisers focused on the accessibility of their service.<sup>11</sup> They considered that, because of being available on the telephone and having longer opening hours, telephone advice was better suited for responding to emergency cases. There were face-to-face clients who expressed dissatisfaction with having to wait for an appointment. Nevertheless, there were also face-to-face clients who reported that, when they had been in need of immediate advice, they had been seen at very short notice. Face-to-face advisers were more concerned with effectiveness in relation to dealing with urgent cases. They believed that the practical advantages that accrue to face-to-face interviewing – particularly the more straightforward consideration and management of papers, and taking more detailed and accurate instructions from clients – made face-to-face interaction preferable in urgent cases. Several telephone advisers agreed that the practicalities of dealing with urgent matters made them more suitable for face-to-face advice.

An example of the particular difficulties that can arise when dealing with a serious and urgent matter over the telephone is when the client is required to complete all documents and issue proceedings themselves. The adviser's 'workaround' in this situation is to assist the client by dictating the required information to them over the telephone. Nevertheless, having to complete and issue a legal form such as an application to suspend a warrant may be beyond the capabilities of some clients. This became apparent in relation to a telephone client facing imminent eviction, who had poor English (although she was being assisted by her English-speaking sister), no landline and no home internet access. When I contacted the client several days after the initial call to the telephone service, the eviction warrant was due to be executed in 48 hours and the application to the court had still not been issued. It is contended that in serious and urgent matters, particularly where clients have poor communication and/or English language skills, low literacy levels or mental health difficulties, self-help of this nature is simply unsuitable.

### **Vulnerable clients**

An important thread running through this research is the recurring notion that, wherever telephone advice has the potential to disadvantage the client, it is most likely to be realised in

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<sup>11</sup> Recent figures released by the Minister of State for Courts and Justice have shown severe year-on-year reductions in the number of Debt advice calls to the CLA Telephone Gateway: In 2013-14 there were 42,911 calls and 2,398 referrals to CLA specialists. In 2016-17, there were 19,699 calls and 646 referrals (HC Deb 17 November 2017 cW). The falling take-up levels for telephone debt advice indicate that claims of greater accessibility are largely theoretical, when no action is taken to encourage public awareness of the service. This is a criticism that has already been made by the Justice Committee (2015).

respect of the vulnerable client. Significantly, it was agreed by both telephone and face-to-face advisers that, for clients with more severe mental health problems, face-to-face advice was preferable. While advisers acknowledged that there were clients for whom face-to-face interaction might be too intense, it was considered that, for most clients with significant mental health issues, face-to-face contact made communication easier. It appears that clients with mental health difficulties also feel that face-to-face advice is more appropriate for their needs and tend to seek it out. The preference for face-to-face advice among clients in this group is apparent from previous research in this area (Balmer *et al*, 2012). The case statistics for 2013–14 (ie following the legal aid changes) for the main organisation involved in this research showed that more legal aid clients with mental health problems used their face-to-face services for housing advice (28 per cent of 2957 records) than their CLA service (8 per cent of 3235 records).<sup>12</sup> Advisers also considered that clients with learning difficulties and hearing impairments were most likely to benefit from face-to-face contact.

Vulnerable clients may also struggle to communicate in telephone interaction, because they often rely on third parties, such as family, friends and key workers to explain their problems (Buck and Smith, 2015). A face-to-face adviser pointed out that it was common for more vulnerable clients to come with someone to assist them. In this study, there were three telephone clients who had to use intermediaries to speak to the adviser. In each instance, the adviser struggled to obtain instructions from the client due to language and/or capability issues and therefore the instructions of these clients were effectively being given by a third party. This highlights the problems that telephone advice can present to clients who have more limited abilities in communication.

Face-to-face advice is also more likely to be able to respond to the multi-dimensional nature of many social welfare clients' problems. An important factor in relation to dealing with vulnerable clients is that they are likely to experience problems in clusters (Pleasence, 2006; Moorhead and Robinson, 2006). In the observations, there were instances when face-to-face advisers identified the client's additional advice or support needs and were able to explain where such advice and support was available. Telephone advisers generally accepted that they were less able to assist clients with access to additional support. The increased

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<sup>12</sup> Due to reporting system differences, which mean that the profile of face-to-face clients can include more than one disability, whereas telephone clients are limited to their main disability, it is possible that the proportion of telephone clients with an additional more minor mental health issue is underrepresented in these figures. Nevertheless the difference is sufficiently great to suggest that, as also found in Balmer *et al* (2012) clients with mental health problems are more likely to use face-to-face services.

scope to address the full range of clients' problems, combined with the greater ease of face-to-face interaction for many vulnerable clients, suggests that the face-to-face environment is likely to result in a better advice experience for this client group.

The government has to a certain extent recognised that vulnerable clients may need face-to-face services, as there is scope for telephone advisers to refer clients for face-to-face advice in any housing case and in debt (i.e. mortgage) cases where telephone advice is not 'suitable' for the client (MOJ, 2014: 11). It has however been suggested that in reality the threshold for referrals in mandatory telephone cases may be 'exceptional circumstances' (Public Law Project (PLP), 2015: 48 citing Patel and Mottram, 2014: 4). Referrals to face-to-face advice seemed infrequent in this research. In 2013–14, there were just 172 debt advice referrals to face-to-face services (Patel, 2014). By 2016-17, this figure had fallen further to only 55 referrals to face-to-face debt advice (Hansard, 17 November 2017). If vulnerable clients who initially seek telephone advice are unlikely to be referred for face-to-face services, they are being denied the opportunity of receiving an advice service that is more likely to deal with their case effectively.

### **Emotional impact on the adviser**

The emotional needs of lawyers and advisers rarely feature in academic studies. Historically, 'professional neutrality' has demanded that lawyers divorce themselves from moral and emotional responses to clients' problems (Boon and Levin, 2008). Accordingly, current literature on the lawyer–client relationship tends to allocate the emotion of the interaction to the client (Sherr, 1999). Nevertheless, although the adviser should be able to regulate their emotions, it is unlikely that any adviser will be entirely free of emotion when dealing with a case (Binder *et al*, 2011; Westaby, 2010).

Despite the professional pressures not to admit to emotional responses, there were face-to-face advisers (including advisers with extensive telephone-only experience), who felt that they were likely to do a better job for clients they met in person. This was either because they were more familiar with the client or had a greater feeling of responsibility towards them. A face-to-face adviser who had until recently had a substantial telephone-only caseload explained:

‘...[T]his is a bizarre thing to say because I think you do work harder for a client once you’ve met them and, I know it’s not the right thing to say or the right thing

to do at all, but I never realised that I felt that way before until I've started taking on a lot more face-to-face work.' (FL1)

A small group of telephone advisers were aware that, as a result of telephone-only contact, they were more detached psychologically from their clients. This was often considered an advantage of telephone advice, protecting the adviser from getting 'too involved' (TA10) or doing 'too much' (TA6). Yet telephone advisers also recognised that not having the same level of connection with the client could have implications for their job satisfaction. Face-to-face advisers explained that their work was more rewarding as a result of personal interaction with clients. The possibility that telephone-only work produces lower motivation among advisers is a concern, because of the potential for that to have an impact on the quality of advice provision.

In addition, it was mentioned by telephone advisers that a benefit of handling conflict over the telephone was that they would not feel threatened if the client became difficult. This was not an issue referred to by any of the face-to-face advisers. Instead, they felt more able to defuse conflict in person. If this disquiet among telephone advisers is a consequence of clients being dealt with remotely, it could have adverse implications for future relationships between telephone advisers and clients. Moreover, in client-centred lawyering, the emotion of the interaction is not divorced from its practical effects (Binder *et al*, 2011; Sommerlad, 1999). Deterioration in the adviser's engagement with the client could have a negative impact on the quality of communication and co-operation between them and this could affect the final outcome of the case.

## **Conclusion**

Can remote telephone advice deliver a service that is equivalent to face-to-face provision for social welfare law clients? Previous statistical research has found that, in housing cases, a much higher proportion of face-to-face clients are 'housed, re-housed, or retain their home' as a result of legally-aided advice and assistance (Balmer *et al*, 2012) (see also the Public Law Project's (2015) report on the Telephone Gateway). This article puts forward a number of reasons why this is likely to be the case.

Face-to-face interviews have a number of possible advantages over telephone-only contact. These benefits arise in both the interpersonal and instrumental elements of the interaction between adviser and client. The emotional components of face-to-face interaction have a practical effect in that they are likely to produce a fuller account from the client and to

result in greater client cooperation. The face-to-face environment also appears better able to meet clients' needs for emotional engagement and support from their adviser. This increases the reassurance felt by clients and supports the development of trusting relationships between clients and advisers which contributes to more detailed client disclosure. Clients' perceptions of telephone advice may also be clouded by concerns about surveillance and privacy. Moreover, in face-to-face interaction, communication between clients and advisers is assisted by non-verbal cues and body language and the more fluid and open structure of face-to-face interviewing. Documents are a useful tool in enabling advisers to understand clients' problems more fully and these are often more easily available to the face-to-face adviser. In combination, these different aspects of face-to-face interviewing result in adviser-client interaction that is more likely to produce better quality instructions and greater co-operation from the client and more comprehensive and effective advice and assistance from the adviser.

Telephone-only advice may be suitable for some, more capable clients, especially those with less complex or less serious matters. Clients who are vulnerable or chaotic, who have limited verbal or written communication skills, who are in urgent or complicated situations are usually better served by face-to-face legal advice. By moving increasingly to telephone services, there is a real danger of using scarce resources to provide a less effective legal aid service which excludes vulnerable clients. Despite this, in pursuit of doing 'more with less', the march towards increased telephone-based provision and 'digital by default' continues at the MOJ (National Audit Office, 2014: 35 – 38). As stated above, the Lord Chancellor has recently announced the long overdue post-implementation review of LASPO (HC Deb 30 October 2017, vol. 630 cols. 14-15WS). This research significantly undermines the notion that telephone advice provision in social welfare law is targeting resources 'at those who need it most' (MOJ, 2010b: 5). In the light of this, the findings of this study demand serious consideration by those conducting the LASPO review and planning the future of legal aid.

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### **Parliamentary Written Statements and Answers**

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